

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of)
SciLucent, LLC) Trademark Examining Attorney
Serial No. 75/913,275) Jessie W. Billings, Esq.
Mark: SCI • LUCENT) Law Office 103

AMENDMENT

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 2031

Dear Sir:

Applicant amends the drawing of its mark to SCILUCENT from SCI • LUCENT.

Attached is an amended drawing.

Section 2.72 of the Trademark Rules of Practice provides the following:

(a) In an application based on use in commerce under section 1(a) of the Act, the applicant may amend the description or drawing of the mark only if:

- (1) The specimens originally filed, or substitute specimens filed under §2.59(a), support the proposed amendment; and
- (2) The proposed amendment does not materially alter the mark.

Attached is the Declaration of Carl Osborne, the President of Applicant, stating, under oath, that the attached substitute specimens were in use at least as early as the filing date of this application.

The amendment to SCILUCENT from SCI • LUCENT does not materially alter the character of the mark. The test for determining whether an amendment is a material alteration is as follows:

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The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark. The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require republication, it would be tantamount to a new mark appropriate for a new application.

Visa International Service Association v. Life-Code Systems, Inc., 220 U.S.P.Q. 740, 743-744 (T.T.A.B. 1983); TMEP §807.14(a). SCILUCENT and SCI•LUCENT are essentially one and the same mark. The commercial impression is the same. *In re ECCS Inc.*, 94 F.3d 1578, 39 U.S.P.Q.2d 2001 (Fed.Cir. 1996) (EXAMODULE is not a material alteration of EXA MODULE).¹

¹ The holding in *In re Dillard Department Stores, Inc.*, 33 U.S.P.Q.2d 1052 (Comm'r Pats. 1993) is not applicable to the case at hand. In *Dillard*, the mark was displayed as follows:

IN•
VEST•
MENTS•

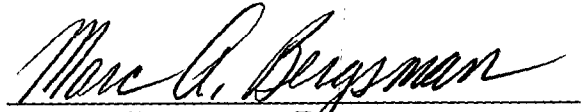
with other design features. Applicant sought to amend the mark INVESTMENTS. In this case, applicant is simply seeking to change the mark to SCILUCENT from SCI•LUCENT.

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In view of the foregoing, applicant respectfully submits that the amendment of the mark should be accepted and the application approved for registration.

SciLucent, LLC

Date: December 6, 2002



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Attorneys for Applicant

SERIAL NO.: 75/913,275

APPLICANT: SciLucent, LLC

BUSINESS ADDRESS: 40570 Stoneburner Mill Lane
Lovettsville, Virginia 20180

SERVICES: Consulting services, namely, assisting others in developing and implementing strategic and operational plans, due diligence assessments, and benchmarking studies in the pharmaceutical medical device, biologics, dietary supplement, cosmetics, and food fields, in Class 35; and,

Consulting services, namely, assisting others in developing, registering and introducing new pharmaceutical, medical devices, biologics, dietary supplements, cosmetics, and foods, and cost-effectively complying with regulatory requirements therewith, in Class 42.

DATE OF FIRST
USE (both classes): January 2, 1999

FIRST USED IN
COMMERCE (both classes): January 2, 1999

ATTORNEYS:

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SCILUCENT

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DECLARATION OF CARL G. OSBORNE

Applicant has attached a specimen showing use of the mark as amended. The mark displayed in the specimen of use has been in use at least as early as the filing date of the application (*i.e.*, February 7, 2000).

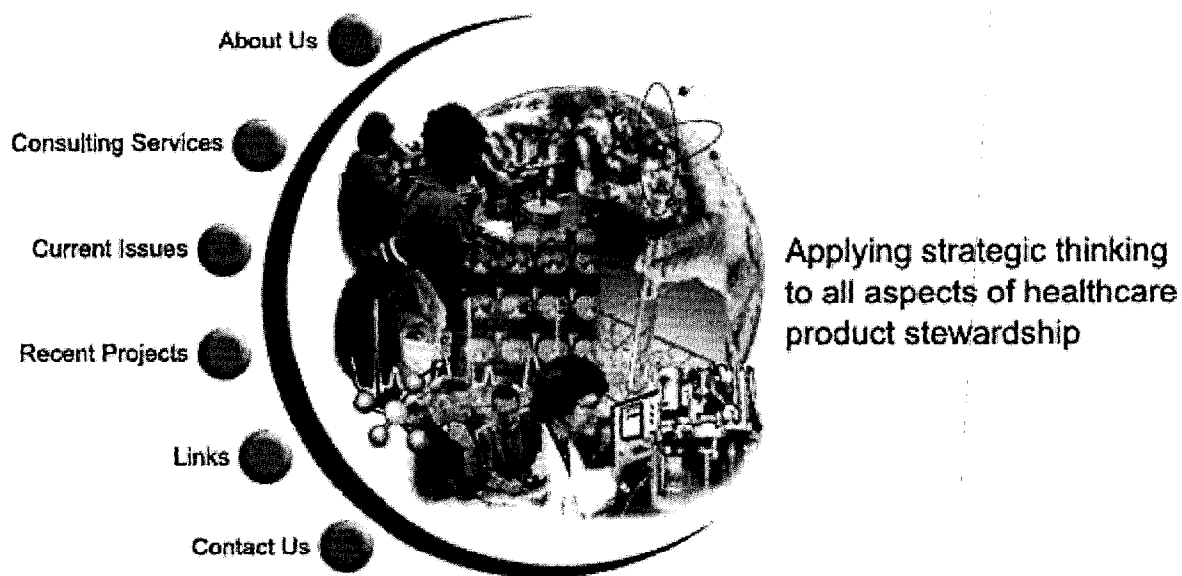
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this document, declares that he is properly authorized to execute this document on behalf of the owner; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Date: November 27, 2002



Carl G. Osborne
Managing Director, SciLucent, LLC

SciLucent



SciLucent's mission is to help healthcare product companies maximize the value of their existing products, identify new products and markets, manage their legal and regulatory risks, and efficiently leverage their operational capabilities and strategic assets.

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